

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIELLE EPPEES, *individually and on behalf of all  
others similarly situated,*

Plaintiff,

-v.-

MMM CONSUMER BRANDS, INC., *doing business  
as MARLEY SPOON,*

Defendant.

22 Civ. 6341 (KPF)

**ORDER**

KATHERINE POLK FAILLA, District Judge:

On November 2, 2022, the Court held a conference to discuss Defendant's contemplated motion to compel arbitration or, in the alternative, to dismiss. (Minute Entry for November 2, 2022). At that conference, the Court expressed its preference that any amended pleading be filed prior to motion practice. In reliance on Plaintiff's counsel's representation that Plaintiff did not intend to amend her pleading, the Court forewent its usual practice of building time to amend into the briefing schedule. The Court is disappointed to see that Plaintiff has now filed an Amended Complaint (Dkt. #19), rather than an opposition to Defendant's motion.

Additionally, it appears to the Court that Plaintiff's amendment is untimely. A party may amend its pleading as of right within 21 days after service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1)(B). Defendant filed its motion and supporting papers on December 2, 2022. (*See* Dkt. #16-18). Plaintiff's window to amend expired 21 days later, on December 23, 2022,

yet Plaintiff did not amend her pleading until December 28, 2022. (Dkt. #19). Plaintiff's filing is thus unauthorized.

However, to minimize further waste of the parties' and the Court's resources, the Court will direct the Clerk of Court to accept the Amended Complaint under Federal Rule of Civil Procedure 15(a)(2). On or before **January 19, 2023**, Defendant shall advise the Court in writing whether it wishes to file an answer to the Amended Complaint or renew its motion. If Defendant opts to proceed with its motion, its letter shall include a proposed briefing schedule consented to by Plaintiff. Defendant is advised that the Court will accept a supplement to Defendant's original motion (not to exceed 10 pages), in lieu of an entirely new brief if that is Defendant's preference.

The Clerk of Court is directed to terminate the motion at docket entry 16.

SO ORDERED.

Dated: December 29, 2022  
New York, New York



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KATHERINE POLK FAILLA  
United States District Judge